

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the Chapter 7 Estate of Bernard L. Madoff,

Plaintiff,

v.

JOHN FUJIWARA *et al.*,

Defendants.

Adv. Pro. No. 10-04289 (CGM)

DECLARATION OF JAMES H. ROLLINSON, ESQ.

I, James H. Rollinson, Esq., declare the following:

1. I am a partner with the law firm Baker & Hostetler LLP, counsel for Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq., and the Chapter 7 estate of Bernard L. Madoff (“Madoff”). As such, I am fully familiar with the facts and circumstances set forth herein.

2. In November 2010, the Trustee commenced an adversary proceeding in the Bankruptcy Court against John Fujiwara (“Mr. Fujiwara”) and his late wife, Rene Fujiwara (together with Mr. Fujiwara, the “Fujiwaras”) in an action captioned *Irving H. Picard v. John Fujiwara et al.*, Adv. Pro. No. 10-04289 (the “Adversary Proceeding”). ECF No. 1. The Trustee alleged that the Fujiwaras received certain avoidable transfers (the “Avoidable Transfers”) from BLMIS in the two-year period prior to its collapse. *Id.*

3. In or about June 2019, the Trustee, Mr. Fujiwara, and certain others¹ agreed to enter into a confidential² Settlement Agreement and Release (the “Settlement Agreement” or the “Agreement”) settling any and all claims and disputes the parties may have against each other with respect to the Avoidable Transfers and the Adversary Proceeding. In the Settlement Agreement, Mr. Fujiwara agreed to pay the Trustee a certain sum total (the “Settlement Amount”) in three installments.³ The Settlement Agreement became effective on January 13, 2020.⁴

4. On January 16, 2020, the parties submitted and this Court so entered a *Stipulation and Order for Voluntary Dismissal of Adversary Proceeding Without Prejudice* through which the Adversary Proceeding was dismissed “without prejudice . . . subject to the Trustee having the right to re-open th[e] adversary proceeding in the event of an uncured default under the Settlement Agreement or a certain note or a certain mortgage attached thereto.” ECF No. 100 at 2-3.

¹ Mr. Fujiwara’s wife died in May 2016 after which Mr. Fujiwara, in his capacity as the executor of her estate, was substituted in as a defendant in the Adversary Proceeding.

² Although the parties agreed to keep the terms of the Settlement Agreement confidential, they reserved the right to disclose its terms in connection with any litigation concerning the Agreement.

³ The third installment was secured by a promissory note (the “Note”), which Mr. Fujiwara executed in the Trustee’s favor in the amount of \$2.2 million, and a certain mortgage (the “Mortgage”).

⁴ The Settlement Agreement became effective on the date on which the following four conditions were satisfied: (i) the Settlement Agreement was fully executed; (ii) a certain Escrow Agreement was fully executed; (iii) the Note and Mortgage were executed by Mr. Fujiwara; and (iv) the Mortgage was recorded by the Trustee. The last of the parties executed the Settlement Agreement on January 6, 2020. The last of the parties executed the Escrow Agreement on January 6, 2020; Mr. Fujiwara executed the Note and Mortgage on June 24, 2019; and the Mortgage was recorded on January 13, 2020.

5. In early 2020, Mr. Fujiwara paid the first installment toward the Settlement Amount. Although Mr. Fujiwara was required to pay the second installment in the amount of \$1,400,000 on or before January 13, 2022, he failed to do so. As a result of this failure, Mr. Fujiwara defaulted under the terms of the Note which caused his payment obligation to accelerate and also triggered his obligation to pay interest on the Note at the variable rate of the Prime Rate (as published by The Wall Street Journal) plus 5% running from the date of his execution of the Note on June 24, 2019.

6. Mr. Fujiwara therefore is obligated, at this time, to pay the Trustee the balance of the Settlement Amount, a total of \$3.6 million, together with the interest accrued under the Note. Attached hereto as Exhibit 1 is a chart which details the total amount Mr. Fujiwara owes the Trustee (a) as of the date of this Declaration and (b) as of May 18, 2022, the date on which the Trustee's motion to enforce is scheduled to be heard by the Court.

I declare under penalty of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746 (2).

Dated: Cleveland, Ohio
April 29, 2022

/s/ James H. Rollinson
James H. Rollinson, Esq.
Baker Hostetler LLP

Counsel to the Trustee

EXHIBIT 1 TO DECLARATION OF JAMES H. ROLLINSON, ESQ.

MR. FUJIWARA'S TOTAL PAYMENT OBLIGATION TO THE TRUSTEE

Total Amount Owed as of April 29, 2022

Date / Date Range	Payment	Amount	WSJ Prime	Note Rate *	Days **
1/13/2022	Second Pymt	\$1,400,000.00			
6/24/2019	Note	\$2,200,000.00			
6/24/2019 to 7/31/2019	Interim Interest	\$ 23,416.44	5.50%	10.50%	37
8/1/2019 to 9/18/2019	Interim Interest	\$ 29,654.79	5.25%	10.25%	48
9/19/2019 to 10/30/2019	Interim Interest	\$ 24,712.33	5.00%	10.00%	41
10/31/2019 to 3/3/2020	Interim Interest	\$ 72,283.56	4.75%	9.75%	123
3/4/2020 to 3/15/2020	Interim Interest	\$ 6,132.88	4.25%	9.25%	11
3/16/2020 to 3/16/2022	Interim Interest	\$ 363,000.00	3.25%	8.25%	730
3/17/2022 to 4/29/2022	Interim Interest	\$ 22,030.14	3.50%	8.50%	43
	Total Interest	\$ 541,230.14			
	Total Owed	\$4,141,230.14			

Total Amount Owed as of May 18, 2022

Date / Date Range	Payment	Amount	WSJ Prime	Note Rate *	Days **
1/13/2022	Second Pymt	\$1,400,000.00			
6/24/2019	Note	\$2,200,000.00			
6/24/2019 to 7/31/2019	Interim Interest	\$ 23,416.44	5.50%	10.50%	37
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3/16/2020 to 3/16/2022	Interim Interest	\$ 363,000.00	3.25%	8.25%	730
3/17/2022 to 5/18/2022	Interim Interest	\$ 31,764.38	3.50%	8.50%	62
	Total Interest	\$ 550,964.38			
	Total Owed	\$4,150,964.38			

* The Note Rate is equal to the Prime Rate as published in the Wall Street Journal over the relevant period plus 5%.

** The number of days for the period of 10/31/19 to 3/3/2020 has been reduced by one day given 2020 was a leap year.